IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.4.2007

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THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.152 of 2007

Nowshad .. Petitioner

..vs..

1.The Secretary to the Government
Food, Co-operation and Consumer
Protection Department
Chennai 600 009

2.The Commissioner of Police
Detaining Authority
Coimbatore City

3.The Secretary to the Government
Food and Consumer Protection Department
Government of India
New Delhi .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent 12.1.2007 in C.No.01/PBMMSEC.Act/IS/2007 against the petitioner's friend Farook, son of Abdul Razaak, aged about 40 years, who is confined at Central prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For petitioner : Mr.V.Parthiban
For respondents : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor
(for R1 and R2)
Mr.P,.Kumaresan, ACGSC for R.3.

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ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard the leaned counsel appearing for the parties.

2. The order of detention on the allegation that the detenu is a `black-marketer' is in question.

3. The order of detention was passed on 12.1.2007. Apart from the ground case, the detaining authority has referred to 5 adverse cases against the detenu. In relation to the adverse cases Crime No.542/2005 dated 20.2.2005, Crime No.101/2006 dated 20.2.2006 and Crime No.265/2006 dated 4.5.2006 it has been indicated in the grounds of detention as if the bail granted to the detenu has been cancelled by the High Court of Madras. In the grounds of detention the detaining authority also relied upon the fact that in connection with the ground case the detenu has been remanded. Keeping in view these two vital aspects the learned counsel for the petitioner has submitted that the order of detention is vitiated on account of the fact that the detaining authority has not furnished the copy of remand order in a language known to the detenu. It is asserted that the detenu knows only Tamil and he does not know English and the copy of the remand order was furnished in English and Tamil translation was not furnished even after request was made. In this view of the matter the learned counsel for the petitioner further placed reliance on the decision reported in AIR 1999 SC 618 (POWANAMMAL V. STATE OF TAMIL NADU) and submitted that the order of detention is vitiated.

4. On going through the said decision we are of the considered opinion that the ratio of the decision is applicable to the present case inasmuch as the copy of the relevant document, namely, remand order was not furnished in the language known to the detenu and that too, after specific request was made. The detention order is liable to be quashed on this ground.

5. The second contention of the petitioner is to the effect that the recital in the grounds of detention that the conditional bail granted to the detenu in Crime No. No.542/2005 dated 20.2.2005, Crime No.101/2006 dated 20.2.2006 and Crime No.265/2006 dated 4.5.2006 has been cancelled is factually incorrect.

6. As a matter of fact, it appears that the High Court has rejected the modification petition filed by the detenu for relaxation of the condition. But, there is no such order available on record to indicate that the bail has been cancelled. Therefore, the order of detention is

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based on non-existent fact which would amount to non-application of mind. On that ground the detention order is liable to be quashed.

7. The Habeas Corpus petition is allowed. Impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to the Government
Food, Co-operation and Consumer
Protection Department
Chennai 600 009

2.The Commissioner of Police
Detaining Authority
Coimbatore City

3.The Secretary to the Government
Food and Consumer Protection Department
Government of India
New Delhi

4. The Superintendent,
Central Prison, Coimbatore.

5. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. C.Prakasam, Advocate SR NO.24579

H.C.P.No.152/2007

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